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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/934,896	08/22/2001	Philip C. Nestoryak	END920010006US1	8177
23550	7590	05/12/2005	EXAMINER	
HOFFMAN WARNICK & D'ALESSANDRO, LLC			ZHEN, WEI Y	
3 E-COMM SQUARE			ART UNIT	PAPER NUMBER
ALBANY, NY 12207			2191	

DATE MAILED: 05/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/934,896

Applicant(s)

NESTORYAK, PHILIP C.

Examiner

Wei Y. Zhen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. This office action is in response to the amendment filed on 11/22/2004.
2. Claims 1-35 are pending and remained finally rejected.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 9, 13, 16-19, 22-26, 30-33 are rejected under 35 U.S.C. 102(b) as being anticipated by Grossman et al. U.S. Patent No. 5,960,175 (Art of Record).

As per claim 1, Grossman et al discloses providing a control file having entries of computer system identifiers (col. 3 lines 65-67 and col. 4 lines 30-40); designating a computer system and a software platform to be installed on the designated computer system using an interface (col. 4 lines 45-57); and querying the control file to identify an entry having computer system identifiers that pertain to the designated computer system (col. 3 lines 65-67 and col. 4 lines 30-57) .

As per claim 2, Grossman et al discloses creating a boot disk; and installing the designated software platform onto the designated computer system using the boot disk (Fig. 5 and col. 5 lines 26-49).

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As per claim 3, Grossman et al discloses entering particular computer system identifiers into the interface and selecting a particular software platform using the interface (col. 5 lines 3-26).

As per claim 4, Grossman et al discloses entering a particular computer model identifier into the interface and entering a particular computer submodel identifier into the interface (col. 4 line 30 to col. 5 line 26).

As per claim 5, Grossman et al discloses the entries in the control file further comprise support data (col. 4 line 30 to col. 5 line 26).

Claim 9 is rejected for the reason set forth in the rejection of claims 1 and 3.

Claim 13 is rejected for the reason set forth in the rejection of claim 4.

Claim 16 is rejected for the reason set forth in the rejection of claims 1 and 2.

Claim 17 is rejected for the reason set forth in the rejection of claim 3.

Claim 18 is rejected for the reason set forth in the rejection of claim 4.

Claim 19 is rejected for the reason set forth in the rejection of claim 5.

As per claim 22, Grossman et al discloses the selected software platform in an operating system (col. 5 lines 1-25).

Claim 23 is rejected for the reason set forth in the rejection of claims 16 and 17.

Claim 24 is rejected for the reason set forth in the rejection of claim 16.

Claim 25 is rejected for the reason set forth in the rejection of claim 18.

Claim 26 is rejected for the reason set forth in the rejection of claim 19.

Claim 30 is rejected for the reason set forth in the rejection of claim 16.

Claim 31 is rejected for the reason set forth in the rejection of claim 17.

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Claim 32 is rejected for the reason set forth in the rejection of claim 18.

Claim 33 is rejected for the reason set forth in the rejection of claim 19.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6-8, 10-12, 14-15, 20-21, 27-29, 34-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grossman et al. U.S. Patent No. 5,960,175 (Art of Record).

As per claim 6, Grossman et al does not explicitly disclose the support data comprises licensing data and technical data. Official Notice is taken that licensing data and technical data were well known in the art at the time the invention was made. Therefore, it would have been obvious to one having ordinary skill in the art to incorporate the teaching of the well known knowledge into the system of Grossman et al to have the support data comprises licensing data and technical data because one would want to utilize the available data to accurately identify the system.

As per claim 7, Grossman et al does not explicitly disclose displaying the support data from the identified entry. Official Notice is taken that displaying data were well known in the art at the time the invention was made. Therefore, it would have been obvious to one having ordinary skill in the art to incorporate the teaching of the well-known knowledge into the system

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of Grossman et al display the support data because it facilitates the selection process of the system.

As per claim 8, Grossman et al disclose the designated software platform is installed onto the computer system based upon the support data (col. 4 line 30 to col. 5 line 41).

Claim 14 is rejected for the reason set forth in the rejection of claim 1, 3, 7 and 8.

Claim 15 is rejected for the reason set forth in the rejection of claim 6.

Claim 20 is rejected for the reason set forth in the rejection of claim 7.

Claim 21 is rejected for the reason set forth in the rejection of claim 8.

Claim 27 is rejected for the reason set forth in the rejection of claim 20.

Claim 28 is rejected for the reason set forth in the rejection of claim 21.

Claim 29 is rejected for the reason set forth in the rejection of claim 14.

Claim 34 is rejected for the reason set forth in the rejection of claims 20 and 21.

Claim 35 is rejected for the reason set forth in the rejection of claims 1, 2 and 7.

Claim 10 is rejected for the reason set forth in the rejection of claim 7.

Claim 11 is rejected for the reason set forth in the rejection of claim 8.

Claim 12 is rejected for the reason set forth in the rejection of claim 6.

### ***Response to Arguments***

5. Applicant's arguments filed on 11/22/2004 have been fully considered but they are not persuasive.

The applicant has argued substantially

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1) The identifiers used by Grossman are simply characteristic features, not a control file having entries of computer system identifiers. The characteristic features in Grossman are used to identify servers, not the workstation. Nowhere does Grossman teach a control file having entries of computer system identifiers.

Examiner's response:

1) Examiner disagrees. Grossman clearly discloses a control file having entries of computer system identifiers (col. 3 lines 65-67 and especially at col. 4 lines 30-40, "...characteristic features of the FOUND frame...sent by each server...the identification of server types via the FOUND frames preferably results from a comparison of the specifications associated with each server..."). Examiner also disagree that applicant asserts that identifying servers it not same as identifying workstation. Server, workstation, computer processors, etc are just various types of names given to a computer system.

Applicant has argued:

2) The control file as included in the claimed invention is not simply used for the limited purpose of identifying servers as are the characteristics features in Grossman, but instead having entries of computer system identifiers. The control file as included in the present invention is not equivalent to the characteristics features of Grossman.

Examiner's response:

2) Grossman clearly discloses that the control file having entries of computer system identifiers (col. 4 lines 31-32, "characters features of the FOUND frames...").

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Applicant has argued:

3) Grossman also fails to teach a software platform to be installed on the designated computer system.

Examiner's response:

3) Examiner disagrees applicant's assertion that Grossman also fails to teach a software platform to be installed on the designated computer system. Grossman clearly discloses a software platform to be installed on the designated computer system (Fig. 5 and col. 5 lines 26-49, note that when a server is booted, the platform/OS are loaded onto the server, therefore, it is inherently the platform is loaded/installed on the computer system).

Applicant has argued:

4) In claim 9, the selected software platform as included in the claimed invention is not simply used to boot a workstation from a server as in Grossman, but is instead installed onto a computer system.

Examiner's response:

4) See the response to claim 3 above.

Applicant has argued:

5) Applicant asserts that providing a control file having entries of computer system identifiers wherein the entries in the control file further comprise support data and wherein the support data comprises licensing data and technical data is not obvious to one skilled in the art as asserted by the office. Applicant further asserts that providing a control file having entries of



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computer system identifiers wherein the entries in the control file further comprises support data and further comprising the step of displaying the support data from the identified entry is not obvious to one skilled in the art as asserted by the office. Applicant also further asserts that providing a control file having entries of computer system identifiers wherein the entries in the control file further comprise support data and further comprising the step of displaying the support data from the identified entry and designated a computer system and a software platform using an interface wherein the designated software platform is installed onto the computer system based upon the support data is also not obvious to one skilled in the art as asserted by the Office.

Examiner's response:

5) Applicant has attempted to challenge the examiner's taking of Official Notice on page 14; however, applicant has not provided adequate information or arguments so that on its face it creates a reasonable doubt regarding the circumstances justifying the Official Notice. Therefore, the presentation of a reference to substantiate the Official Notice is not deemed necessary. The examiner's taking of Official Notice has been maintained. In order to adequately traverse, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating *why* the noticed fact is not considered to be common knowledge or well-known in the art. See MPEP 2144.03 [R-1] (c), 37 CFR 1.111(b).

### ***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Wei Y. Zhen whose telephone number is (571) 272-3708. The examiner can normally be reached on Monday-Friday, 8 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Dam can be reached on (571) 272-3695. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Wei Zhen

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**WEI Y. ZHEN**  
**PRIMARY EXAMINER**